

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARIO P. TELLO,

Plaintiff(s),

vs.

BANK OF AMERICA N.A., et al.,

Defendant(s).

Case No. 2:12-cv-01040-GMN-NJK

ORDER GRANTING MOTION TO
STAY DISCOVERY

(Docket No. 57)

Pending before the Court is Defendants' motion to stay discovery pending resolution of Defendants' motion to dismiss. *See* Docket 57; *see also* Docket No. 48 ("motion to dismiss"). Plaintiff filed a response in opposition. Docket No. 61. The Court finds the matter properly resolved without oral argument. *See* Local Rule 78-2. For good cause shown and for the reasons discussed below, the Court hereby **GRANTS** the motion to stay discovery pending resolution of the motion to dismiss.¹

"The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The case law in this District makes clear that motions to stay discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the potentially

¹ Because the Court grants the motion to stay, it denies without prejudice the discovery plan submitted by Plaintiff. *See* Docket No. 58.

dispositive motion can be decided without additional discovery; and (3) the Court has taken a “preliminary peek” at the merits of the potentially dispositive motion and is convinced that the plaintiff will be unable to state a claim for relief. *Id.* at 602-603.

The Court finds these factors are present here. First, the motion to dismiss is potentially case-dispositive as it challenges all pending claims. Second, the motion to dismiss can be decided without additional discovery. Third, the Court has taken a preliminary peek at the merits of the motion to dismiss and believes Plaintiff will be unable to state a claim for relief.²

Accordingly, the motion to stay discovery is hereby **GRANTED**. In the event that the motion to dismiss is not granted in full, the parties shall submit a joint status report to the undersigned within 14 days of the issuance of the order resolving the motion to dismiss. That status report shall indicate what discovery needs to be completed and shall provide a proposed plan for completing it.

IT IS SO ORDERED.

DATED: July 23, 2013



NANCY J. KOPPE
United States Magistrate Judge

² Conducting this preliminary peek puts the undersigned in an awkward position because the assigned district judge who will decide the motion to dismiss may have a different view of its merits. *See Tradebay*, 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion is not intended to prejudice its outcome. *See id.*